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M.M., Appellant)	
)	
and)	Docket No. 20-0523
)	Issued: August 25, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. COAST GUARD, Boston, MA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 1, 2019 appellant, then a 63-year-old boat builder, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 2019 he injured his left knee when climbing off staging, he stepped on a hammer and twisted it while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that he was injured in the performance of duty. Appellant stopped work on March 28, 2019 and returned to work on April 1, 2019.

On March 25, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to his left knee pain. In a March 28, 2019 attending physician's report, Part B of the Form CA-16, Dr. Avnish Clerk, a Board-certified orthopedic surgeon, noted that appellant stepped on a hammer and twisted his knee at work while climbing off staging. He listed a finding of arthritic aggravation and checked a box marked "Yes" to indicate that the condition was caused or aggravated by the described employment activity. Dr. Clerk opined that appellant could resume light-duty work with no bending, kneeling, squatting, or climbing.

In a March 28, 2019 report, Dr. Clerk noted that appellant had left knee pain after twisting his knee at work. He examined appellant and reviewed x-rays of his left knee. Dr. Clerk diagnosed primary osteoarthritis of the left knee and recommended physical therapy treatment. In a form report of even date, he noted that appellant could return to work with the restriction of no bending, kneeling, squatting, or climbing.

Appellant submitted physical therapy treatment notes dated April 3 to May 7, 2019.

Dr. Clerk noted in a May 9, 2019 report that appellant was required to do more heavy work at his employment which had significantly aggravated his left knee symptoms. He examined appellant and diagnosed primary osteoarthritis of the left knee. Dr. Clerk recommended that appellant refrain from any heavy lifting, squatting, kneeling, or climbing.

A magnetic resonance imaging (MRI) scan of appellant's left knee, dated May 23, 2019, demonstrated a medial collateral ligament (MCL) sprain, articular cartilage loss and joint effusion, and a potential radial tear involving the medial meniscus.

In a June 4, 2019 report, Dr. Clerk noted that appellant's left knee symptoms had not improved. He examined appellant and diagnosed primary osteoarthritis of the left knee. Dr. Clerk opined that appellant's symptoms were secondary arthritic changes and were related to the demands of his job.

In a June 5, 2019 physician review report, Dr. David Sack, a Board-certified specialist in occupational medicine, reviewed the medical evidence of record at the request of the employing establishment. He did not conduct a physical examination. Dr. Sack indicated that the diagnosis of degenerative arthritis is a condition that develops over time and not as a result of a single, discreet injury event. He noted that appellant's MRI scan report suggested that the degenerative

changes were chronic and that appellant's symptoms were likely related to the preexisting arthritic condition. As such, Dr. Sack opined that there was insufficient clinical documentation to support a causal relationship between the reported injury event and the diagnosis of degenerative arthritis. He further indicated that, if the proposed procedure for appellant's condition was requested, a district medical adviser (DMA) should review for applicability and appropriateness.

In a June 20, 2019 development letter, OWCP indicated that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or otherwise challenge the case, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for consideration. OWCP requested additional factual and medical evidence in support of appellant's claim and provided a questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

Subsequently, OWCP received a June 6, 2019 report from Dr. Robert Timmons, a Board-certified osteopathic physician specializing in occupational medicine, who noted that appellant was experiencing left knee pain after twisting his left knee at work. He examined appellant and diagnosed other meniscus derangements of the left knee and unilateral primary osteoarthritis of the left knee. Dr. Timmons opined that, with regard to medical causation, the objective findings were consistent with the history of a work-related etiology.

On June 24, 2019 appellant responded to OWCP's development questionnaire. He noted that, on March 25, 2019, he was carrying a rub rail to a location for installation. Appellant indicated that, while carrying the rub rail, he climbed up the steps of a staging and had to duck to avoid a loose object. He reported that while ducking, he stepped on a hammer, lost his footing, and twisted his left knee against the guide rail. Appellant noted that he felt an unusual, immediate pain in his left knee that he had not previously experienced. He then reported the incident to his supervisor and sought medical care.

Dr. Timmons related appellant's history of injury in a July 8, 2019 report. He examined appellant and again diagnosed other meniscus derangements of the left knee and unilateral primary osteoarthritis of the left knee. Dr. Timmons opined that appellant's twisting of his knee on March 25, 2019, likely caused a strain of the left knee, which, coupled with his advanced knee degeneration, resulted in the significant cycle of knee pain symptoms and diminished knee function. He indicated that, while appellant did have preexisting arthritis, the injury event significantly aggravated this condition since he was asymptomatic prior to the event and the symptoms were not resolving.

In a July 8, 2019 medical form, Dr. Timmons indicated that appellant could return to work with restrictions on July 8, 2019. He noted that the restrictions were indefinite and that appellant should avoid twisting of the left knee and that he was unable to kneel, squat, or climb.

In a July 26, 2019 report, a physician assistant examined appellant and diagnosed primary osteoarthritis of the left knee. In a medical form of even date, the physician assistant listed appellant's work restrictions and indicated that he could return to work with modification.

The employing establishment controverted appellant's claim in a July 30, 2019 letter, noting that the medical evidence of record was insufficient to establish causal relationship. It attached the previously submitted June 5, 2019 report, from Dr. Sack with its letter.

By decision dated August 6, 2019, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted March 25, 2019 employment incident.

In an August 5, 2019 report, Dr. Timmons related appellant's history of present illness. He examined appellant and diagnosed other meniscus derangements of the left knee and unilateral primary osteoarthritis of the left knee. Dr. Timmons again opined that, while appellant did have preexisting arthritis, the injury event significantly aggravated this condition since he was asymptomatic prior to the event and the symptoms were not resolving.

In a September 3, 2019 notification of work capacity, Dr. Timmons noted that appellant could return to work with restrictions, which he indicated would last indefinitely. He reported that appellant was unable to kneel, squat, or climb.

On October 15, 2019 appellant, through counsel, requested reconsideration.

By decision dated December 16, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128 (a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation, at any time, on his or her own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens

⁴ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see C.C.*, Docket No. 19-1622 (issued May 28, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a); *see K.T.*, Docket No. 18-0927 (issued May 13, 2020). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant's October 15, 2019 request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advanced a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided relevant and pertinent new evidence in support of his request for reconsideration. The underlying issue in this case of whether the accepted March 25, 2019 employment incident caused or aggravated the diagnosed conditions is a medical issue, which must be addressed by relevant medical evidence.⁹

Appellant submitted an August 5, 2019 report from Dr. Timmons which was substantially similar to his July 8, 2019 report. While Dr. Timmons did address causation in his August 5, 2019 report, it was nearly identical of his opinion in his July 8, 2019 report. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.¹⁰ Accordingly, this evidence is insufficient to warrant merit review.

Appellant also submitted a September 3, 2019 notification of work capacity from Dr. Timmons, which listed appellant's work restrictions. However, this evidence does not address the underlying issue in this case, which is whether appellant's diagnosed conditions were causally related to the accepted March 25, 2019 employment incident. The Board has held that the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see C.C.*, *supra* note 5; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *D.B.*, Docket No. 19-1963 (issued July 1, 2020).

¹⁰ *G.J.*, Docket No. 20-0071 (issued July 1, 2020).

¹¹ *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹²

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).¹³

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² *Id.*

¹³ The Board notes that the employing establishment issued a Form CA-16, dated March 25, 2019. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).